

1 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2 -----x

3 In re GENERAL MOTORS LLC
IGNITION SWITCH LITIGATION 14 MD 2543 (JMF)
4 -----x
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New York, N.Y.
October 13, 2016
2:07 p.m.

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7
8 Before:

9 HON. JESSE M. FURMAN,

10 District Judge
11

12 APPEARANCES
13

14 HAGENS BERMAN SOBOL SHAPIRO LLP
Co-Lead Plaintiff Counsel
15 BY: STEVE W. BERMAN
-and-
16 LIEFF CABRASER HEIMANN & BERNSTEIN LLP
BY: ELIZABETH J. CABRASER
17 -and-
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22 RICHARD C. GODFREY
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24
25

1 (Teleconference in Open Court)

2 (Case called)

3 THE COURT: You may be seated. Good afternoon to all
4 of you. Good to see you. I think it is uncharacteristic to
5 say good afternoon. I hope those of you who fasted yesterday
6 had an easy fast. Mr. Hilliard, I am pleased you're able to
7 join us. Mr. Godfrey, I hope everything is in order for this
8 week.

9 MR. GODFREY: We are getting ready, your Honor.

10 THE COURT: Let's get to business. Just a reminder to
11 speak into the microphone so folks listening in on the court
12 call can hear us.

13 MR. HILLIARD: Pardon me. I just point out to the
14 court Ms. Creamer, who was in the courtroom last time, had
15 contacted my office, asking that we assist her in getting onto
16 Court Call and listen only, and just to advise the court we
17 were able to do so, and so she should be at least listening on
18 the call.

19 THE COURT: Thank you. My understanding is Ms.
20 Creamer did contact Court Call, and I requested that Court Call
21 waive the fees so that she can participate. I was actually
22 planning to issue an order advising Ms. Creamer, and I don't
23 know if she is listening, I will advise her now as well, that I
24 am going to arrange for a waiver of fees for all future
25 conferences so we don't need to deal with that on a regular

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1 basis. She can just register in the normal course and listen
2 in on future conferences as well.

3 Now, she also called my Chambers, despite my repeated
4 reminders to her she may not do that unless communicated
5 through the Pro Se Office. I will remind her of that yet again
6 in the same order that I will issue after this conference, but
7 thank you for your help in making those arrangements. All
8 right. Any other preliminary matters before we get started
9 with the agenda? All right.

10 In that case, first on the agenda is bankruptcy
11 proceedings and petition for cert. I am not sure there is
12 anything really to discuss there. Obviously, I appreciate the
13 update as always and expect that you'll keep me apprised of
14 developments, but is there anything otherwise that we need to
15 discuss?

16 All right. Good.

17 Similarly, I am not sure there is much for us to
18 discuss with respect to the coordination of related actions.
19 The most recent related case update was a September 30th letter
20 and also the letters advising me that issues were resolved in
21 the Felix case without the need for me to intervene, which I am
22 obviously grateful for. Is there anything else to discuss on
23 that front?

24 MR. GODFREY: As to Felix, while the immediate issue
25 that the court was made aware of that was the collateral -- of

1 the court's (Inaudible) has been resolved satisfactorily.

2 There does appear to be new initiatives under way by
3 plaintiff's counsel that we rather strongly suspect will put us
4 in a similar position in the next month to three months as we
5 were in with respect to the crime fraud order. They fall into
6 the following buckets:

7 One, plaintiffs in Felix are seeking to depose the
8 King & Spalding lawyers;

9 Two, while they have not yet served us, they have
10 given us an indication that they're going to be serving a
11 corporate representative deposition which is willing to, among
12 the topics, raise the same issues that the crime fraud issue or
13 crime fraud motion raised or raise similar issues, such as the
14 DPA, statement of facts, the privilege, et cetera. Those are
15 not yet cleared for this Court, but as I have done before, I am
16 putting it -- (inaudible) -- I have seen this act before, this
17 play before, and we hope we can resolve this.

18 We will try our best to resolve it, but I do have
19 concerns that we are proceeding down a similar path. So we
20 will do our best to resolve it. I think the court knows that.
21 We will do our best to work with the court in St. Louis that
22 would prevent us from following your Honor, but I don't think
23 we should be under any illusion that the matter has simply gone
24 away. I wanted to alert the court these are on the horizon,
25 and how they develop only time will tell over the next month to

1 three months.

2 THE COURT: All right. Duly noted.

3 MR. GODFREY: The other issue is Orange County, and
4 this issue we will and we have been endeavoring to work out
5 various discovery issues with Mr. Berman and his colleagues.
6 There may be some conflicts that arise that we'll need your
7 Honor to work out, but we are continuing to try to work that
8 out.

9 I am not in a position to say today that we will be
10 able to work them out all, but I am hopeful in that regard. I
11 didn't want the court to be surprised if we can't work it out,
12 we are back here asking for assistance from the court. We are
13 making some progress, and hopefully we'll be able to resolve
14 this as we have in the past. I didn't want to just pretend it
15 wasn't out there given we are on the clock.

16 THE COURT: Understood. I think you discussed that in
17 the letter itself as well. Duly noted. Mr. Berman, I don't
18 see any need to discuss it further now.

19 MR. BERMAN: Then I won't.

20 THE COURT: Very good. All right.

21 The next item on the agenda is document production.
22 Anything to discuss there? Very good.

23 In that case, discovery is sought by plaintiffs. Now,
24 I have to say that I am a little bit frustrated by this
25 particular issue because it seems to me that one or both sides

1 is engaged in some degree of gamesmanship. I am not really
2 interested in litigating who is responsible, but the bottom
3 line is that as I have in the past, I do not intend to get
4 involved until you have met and conferred in an effort to
5 narrow if not resolve these sorts of disputes. Now, to that
6 end, I am mindful of my desire to keep things moving and moving
7 expeditiously. I want you to meet and confer if you have not
8 already done so, and you can fill me in if you have.

9 Mr. Godfrey is standing up.

10 MR. GODFREY: We have had several meet-and-confers.

11 What I was alluding earlier to, we are making efforts
12 to resolve it. I should have been mentioned it covers this
13 issue as well. If we can't resolve it, I believe we'll be down
14 to discrete issues, but we are making progress I think and I
15 hope to resolve as much as this as possible.

16 Since our letters, we have had meet-and-confers on
17 this. The parties are talking to try to resolve things. If we
18 can't resolve it. We'll tee it up for the court. We are not
19 entirely through the process.

20 THE COURT: When would you be able to get back to me
21 about whether there are issues that require my intervention?

22 MR. GODFREY: I would think by Tuesday.

23 THE COURT: Mr. Berman.

24 MR. BERMAN: I am certainly willing to engage in
25 another meet and confer. I thought I understood that GM's

1 position was, with respect to the very weekly narrow discovery
2 we seek right now in the economic loss case, that they said no,
3 it is not happening. So I guess we'll go back and meet and
4 confer.

5 My only caution in that regard is some of the
6 witnesses -- we want, for example, four depositions, just four
7 -- those witnesses will be relevant not only to the economic
8 loss case, but I believe to Mr. Hilliard's PI cases. So there
9 is a clock ticking because he has a discovery deadline. So I
10 don't want to have a problem with hearing from them on Tuesday,
11 but I think we need a very short letter exchange to get this
12 decided by the court.

13 THE COURT: Great. So talk about it and get back to
14 me by Tuesday, and if there are any issues remaining in
15 dispute -- and that letter should be a joint letter -- what you
16 should propose. If not, you should either address them for me
17 to decide or you should at a minimum propose how you would
18 propose to proceed; namely, with respect to briefing on those
19 issues.

20 I agree with Mr. Berman that that would need to be on
21 a fairly expedited schedule, with the hope that it would get
22 resolved sooner rather than later so things don't run awry.

23 MR. GODFREY: That is our intention.

24 If we can't resolve it, I would at least like to get
25 it in a very precise, concrete manner so the court knows

1 exactly, without rhetoric or perceived charges and
2 counter-charges, exactly what is at stake and what the issues
3 are. Part of the goal here is neither side should be taking
4 extreme positions. We try to be reasonable on this, but if I
5 don't agree with Mr. Berman's characterization and he doesn't
6 agree with mine, we would like to tee it up for the court,
7 where the court would say yea or nay, or here is a better way,
8 issue-by-issue if we can't resolve it in a very precise
9 fashion. That is the goal of this exercise.

10 THE COURT: That would be appreciated by me.

11 MR. BERMAN: Since we are here, let's assume we don't
12 agree, and maybe my assumption will be proven wrong, can we
13 agree right today, today on schedule and process, and I would
14 suggest each side gets five pages by Friday.

15 MR. GODFREY: Fine.

16 THE COURT: Great. I still want a joint letter by
17 Tuesday advising me of what issues, if any, remain in dispute
18 and what issues you have resolved so that I have a sense of
19 what the briefs will cover that are to be filed next Friday.
20 All right? Otherwise, that is fine by me.

21 Two things about that. One is apropos of what I said
22 a few minutes ago, don't waste your breath or time litigating
23 who should have raised this and when; that is to say, that
24 issue is behind you and just address along the lines of what
25 Mr. Godfrey proposed, what the issues remaining in dispute are

1 and tee them up for me to decide, as you have done quite
2 helpfully in the past.

3 And relatedly, I just don't anticipate seeing this
4 sort of dispute raised for the first time in agenda letters in
5 future status conferences. I expect you guys to do better.
6 Again without putting blame on one side or the other, maybe it
7 should be pinned on both. I would very much like you to
8 discuss these sorts of things in advance and not be raising
9 them in a back-and-forth for the first time in an agenda
10 letter.

11 That brings us to the fourth amended consolidated
12 complaint or FACC, as I may call it, FACC. Let me talk about
13 the issues that are in dispute there as raised by your dueling
14 proposed orders and letters. In no particular order, although
15 largely in the order that the proposed order is framed, let me
16 raise a series of issues, either tell you where I stand or have
17 some discussion.

18 First, new GM in its letter raises an issue that lead
19 counsel did not address; namely, implications of my opinion
20 with respect to the motion to dismiss the third amended
21 consolidated complaint or TACC, T A C C; namely, the claims
22 that lead counsel have repleaded that were dismissed in that
23 opinion. Now, any thoughts?

24 Is there anything you want to say on that front?

25 MR. BERMAN: Yes. Let me divide the repleaded claims

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1 into two categories. One is RICO and one is the brand name
2 theory. On RICO, we don't intend to actually press that. We
3 think we are bound by your ruling. We haven't added anything
4 new, either factually or legally, but to preserve for appeal we
5 just incorporated RICO by reference. There may be a debate
6 whether that is necessary. I don't think it is crystal clear
7 under Second Circuit law, so it is there, but we are not asking
8 you to do anything other than say the same ruling.

9 THE COURT: Done.

10 MR. BERMAN: On the brand name defect issue, we fully
11 understand your ruling, but we have done two things
12 differently:

13 Number one, we have confined the brand name defect to
14 cars that had a recall at issue in the case, so there is no
15 more Ms. Andrews who didn't have a defect in her car and she is
16 suing solely for brand name. Now everyone has a defect;

17 Second, we have added a section that we went and got
18 the help of a brand name expert to explain to the court the
19 importance of the brand and why what happened here is different
20 than Apple falling out of favor and their phone losing value.
21 I fully understand you may disagree with us again, but you
22 didn't dismiss it with prejudice, and I want to tee that up as
23 framed in this complaint for the Second Circuit, understanding
24 you disagree with us again. That is why it is in there.

25 THE COURT: Okay. Mr. Godfrey.

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1 MR. GODFREY: First, as we read the law, they do not
2 need to replead RICO.

3 THE COURT: I don't need to address that.

4 MR. GODFREY: Secondly, your Honor did not give them
5 leave to amend to do have a do-over. Your Honor gave them
6 leave to amend for other purposes, and consistent with the
7 court's ruling, they didn't move to reconsider, they didn't
8 move at the time to amend the complaint or to reconsider.

9 They just did it, and now they want to do it again.
10 Nothing is going to change. Adding academic speculation about
11 brand evaluation for a subset or largess before doesn't change
12 anything. There is no reason to rebrief the issue, no reason
13 to reargue the issue. They're bound by the court's decision.
14 If they want to move for reconsideration, they should have
15 moved for reconsideration, which they didn't do.

16 THE COURT: All right. I tell you what. Since I
17 don't have my 100-some-odd-page opinion memorized, let me defer
18 giving you an answer on that front until I can go back and take
19 a look at it and take a look at the relevant new pleadings, and
20 I will let you know how I intend to proceed on that front.

21 Mr. Berman, can you direct my attention, is there a
22 discrete part of the FACC that addresses the brand devaluation
23 theory?

24 MR. BERMAN: I didn't haul it in with me. There is a
25 section entitled, "Brand Name Diminution," something to that

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1 effect. It was an entire section that is new. I can go back
2 and send you and your clerk an e-mail directing you precisely
3 to the new allegations on brand name defect.

4 MR. GODFREY: It is Paragraphs 308 to 335, your Honor.

5 MR. BERMAN: In addition, when you go back and review
6 your order, I read it carefully a number of times, and it was
7 not dismissed with prejudice. That is why we felt we could
8 amend.

9 THE COURT: Did I say it was dismissed without
10 prejudice?

11 MR. BERMAN: No, you didn't. You didn't address it
12 either way. As I understand the case law, it is unless you
13 dismiss with prejudice, we have a right to amend because it is
14 the first time you addressed the way to proceed by
15 deficiencies.

16 THE COURT: I will tell you what. Again I'll ponder
17 this, but since you didn't actually address this in your
18 letter, and new GM has cited authority for the proposition that
19 where an opinion is silent on the issue, it should be treated
20 as dismissal with prejudice, why don't you submit a two-page
21 letter addressing the issue no later than next Tuesday as well,
22 and I'll tell you how I plan to proceed thereafter, okay?

23 All right. The second issue is bankruptcy appeals.
24 Just for clarification, I take it that is in reference to the
25 three appeals that have been stayed pending the Second Circuit

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1 rulings. Is that correct? Mr. Pixton is nodding.

2 Assume that is the case. That is fine with me and I
3 am okay with doing new GM until December 21 for its opposition
4 and plaintiffs until January 16th for their consolidated reply,
5 and I'll give plaintiffs up to twelve pages for that reply. I
6 haven't decided yet whether I want you guys to revise the
7 proposed order and conform it to what I am saying in the
8 following few minutes or if we will do that. Somebody should
9 be taking pretty good notes to make sure if I decide it is your
10 burden, that you can carry it.

11 Mr. Pixton, I apologize for that.

12 Next is the motion to dismiss practice with respect to
13 the FACC. Everybody seems in agreement on the states that will
14 be the subject of that motion. I agree with new GM, I think
15 initial briefs should be limited to 60 pages and reply to 30.

16 I am willing to give plaintiffs until January 20th for
17 their opposition and new GM until February 17th -- because the
18 20th is a court holiday -- for its reply, with the
19 understanding that given that extra few days on both ends, that
20 I will not look with favor on any request for extensions of
21 those deadlines even if they are for just a few days.

22 Now, I guess the question I have is, you know, there
23 is a little bit of dispute how to proceed thereafter. My hope
24 is that I would not ultimately need to rule on motions with
25 respect to all 51 jurisdictions at issue, and it would be

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1 helpful to me to have a sense of whether you think that there
2 will be additional motion practice or if you have a sense of
3 whether these 16 will sort of provide you with the data you
4 need to figure out how the rulings would apply to the other
5 jurisdictions that would ultimately be at issue. I don't
6 necessarily expect you to know the 51 state survey, but to some
7 extent you have done that, at least the plaintiffs have with
8 respect to drafting the complaint.

9 Any thoughts?

10 MR. GODFREY: First, I think the 16 states will
11 certainly provide guidance as to a number of other states.

12 Second, depending on how the court rules, while there
13 will be additional motion practice, it is possible we'll be
14 able to lump some of the states together with respect to that
15 motion practice. This will depend on how we line up the
16 court's rulings. The laws in states do differ, even though the
17 source of many of the laws is different, different application
18 and different interpretation. The -- Consumer Fraud Act is
19 radically different from the California similar act. The
20 Consumer Fraud Act is radically different from some other of
21 the other states of consumer fraud acts in terms of how it has
22 been interpreted the same with Kansas and other states.

23 I can't say you're not going to have to make a
24 decision on laws of each of the other states, but our hope
25 would be that we'll be able to group them, say these three

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1 states are similar on these two points, they're different on
2 these three points, and pare the briefing down. We don't think
3 the law of any two states is identical, but we are hoping the
4 16 will give us enough guidance to simplify the briefing. That
5 is the best we can do, your Honor.

6 THE COURT: Great. Mr. Berman.

7 MR. BERMAN: I don't disagree with anything Mr.
8 Godfrey said.

9 THE COURT: All right. Here is what I am going to do,
10 which sort of I am not sure it splits the difference, the
11 difference between the two sides, but it is a little bit of a
12 different approach that either of you has proposed.

13 Basically no later than three weeks from my ruling on
14 the motion to dismiss the FACC, which again well focus on the
15 eight states you have agreed upon, I want you both to confer
16 and submit a joint letter proposing how to proceed with respect
17 to any remaining jurisdictions. Now, obviously do that in the
18 most efficient and expeditious way possible.

19 Now, that doesn't give you a whole lot of time and you
20 obviously won't have the benefit of my ruling, but at the same
21 time, you can do some of that work in anticipation of the
22 ruling, and I don't see any reason why you can't start looking
23 at it before you have the benefit of what my ruling is going to
24 be; that is to say, you'll what the law is in the eight states
25 you're briefing.

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1 In the meantime, you can start looking at the
2 remaining I guess 35 and start to figure out how you think it
3 should work once you get my rulings on the eight you're going
4 to brief.

5 MR. GODFREY: I'll highlight for the court how we
6 envision it as a practical matter and we hope will work this
7 way. The court has issued a ruling thus far with respect to
8 certain states on the manifest defect requirement, the laws of
9 the states. There are other states which have different cases
10 that the court has seen.

11 If the court, for example, agrees with us in Alabama,
12 the Supreme Court faced it twice, a different type of case we
13 think applies fully here, the court agrees with us, and we hope
14 we can lump some other states into that bucket because they
15 will have similar, in our view, similar higher court decisions.

16 If the court disagrees with us, then I have another
17 door. Despite what we think the law is, I think the court,
18 I'll alert the court to the cases, but with suspect, the court
19 will determine the resolution in light of how it views Alabama
20 and Michigan, et cetera.

21 The goal was to find the states that have very clear
22 distinctions as compared to a continuum of distinctions, very
23 clear distinctions so what, if any, court was out one way, we
24 can see which states went that way and another way. All of the
25 laws are different and in subtle ways, as the court knows, and

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1 other federal courts have commented. We are going to try to
2 avoid having to brief the details of each law 51 times if we
3 can do that. If we can't do that, I apologize. We will try in
4 advance to do that. That is our operating goal, and I think
5 three weeks is sufficient since we have already done this.

6 I use defect as example. We understand that the court
7 said we disagree. We think other states, other states in which
8 the courts have come up differently, your Honor may come out
9 the same door as before, or your Honor may say okay, the state
10 law is different and I agree with new GM at this time. We are
11 trying to do it in a way that reduces the burden on the court
12 if possible.

13 THE COURT: I am certainly grateful for that. I would
14 ask you to speak a little more slowly and into the microphone.

15 I guess what I am saying is no later than three weeks
16 after my ruling I want your further thoughts and guidance on
17 this, but I think you should be talking about it frankly even
18 before the motion is filed with respect to the FACC because to
19 the extent that you can ply your way through the remaining 345
20 in advance of a ruling and say we stipulate and agree that the
21 court's ruling as to X state will also apply to A, B and C
22 states, great.

23 To the extent you're able to then say we agree that
24 the following states will ultimately need to be briefed
25 separately, I would think that some of that work could be done

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1 even in advance of having the benefit of my ruling. So we can
2 continue to discuss this as the case proceeds, as the motion is
3 briefed, but as an outside deadline is three weeks after my
4 ruling I want pretty specific plan for how we're going to
5 proceed, in the hope we won't have to do this 35 more times,
6 but if we need to, we need to.

7 Yes, Mr. Berman.

8 MR. BERMAN: I was only going to add, your Honor, this
9 grouping concept, I think we should be able to do it because
10 both Ms. Cabraser and I have been in cases where, for example,
11 there was a plaintiff from Massachusetts who we were able to
12 convince a judge to certify a case in 15, 20 states because the
13 court found there wasn't substantial and material differences
14 in state law. We should be able to do some grouping both on
15 the motion to dismiss stage and we think on the class
16 certification stage.

17 THE COURT: Great. I sure hope so, and all I am
18 saying is I think you should be able to have those
19 conversations over the course of the couple months and even
20 before you learn what I think about all this.

21 MR. GODFREY: On the class side, that is a different
22 proposition, just so the record is clear. I understand the
23 plaintiffs' plan here, but we rather strongly disagree with
24 that, and they should not assume that grouping based upon
25 motion to dismiss rulings has any transference to grouping with

1 respect to class certification.

2 THE COURT: All right. You laid your marker down.

3 Next is successor liability motion practice. I got
4 your proposed order. I am fine with it and I am prepared to
5 sign it unless there is anything you need to discuss on that
6 score? Good. I will sign that later today.

7 Now, plaintiff FACC sheets. So, number one, I will
8 grant the named plaintiffs and jurisdictions subject to the
9 TACC motion to dismiss until November 11th to provide the
10 plaintiffs' FACC sheets.

11 With respect to other plaintiffs, I am inclined to
12 follow something of a middle ground, which is, I am inclined to
13 think that the named plaintiffs in the eight states that will
14 be subject to the FACC motion to dismiss practice should
15 produce plaintiff FACC sheets even before a ruling on that
16 motion, but also agree that discovery should to some extent be
17 staged so as to prioritize the plaintiffs from the eight TACC
18 states' jurisdictions; that is, on the theory that the
19 viability of their claims has already been litigated, all of
20 which is to say, I'd be inclined to require that the TACC
21 plaintiffs, if I can call them that, have to produce their
22 plaintiff FACC sheets by November 11th, and then set a deadline
23 thereafter for the FACC plaintiffs, if I can call them that, to
24 produce their plaintiff FACC sheets perhaps the beginning of
25 January or something, so that plaintiffs can essentially devote

1 their time and attention in the first instance to the TACC
2 plaintiffs, and turn to the FACC plaintiffs, and then discovery
3 thereafter, interrogatories and depositions would be similarly
4 staged, and I don't know to what extent we need to nail down
5 the particulars in that regard or just state as a general
6 matter that priority should be given to the TACC plaintiffs,
7 but that is sort of my inclination. Discuss?

8 MR. BERMAN: That is fine with the plaintiffs, your
9 Honor.

10 MR. GODFREY: That is fine, but it needs to be viewed
11 in the entire context of the order. What I mean to say is at
12 some point if the claims survive, new GM we believe is entitled
13 to full discovery against every named plaintiff.

14 So I don't mind staging in terms of doing the ones
15 currently subject to a motion to dismiss and the ones the court
16 has already ruled upon, but I do mind and we do object to a
17 concept that says they could file a motion for class
18 certification with named plaintiffs in a complaint that we
19 never had access to vis-a-vis discovery.

20 THE COURT: I agree.

21 MR. BERMAN: We are not saying that, your Honor.

22 THE COURT: I agree, and obviously it may have
23 implications for our schedule down the road doing it this way,
24 but my hope is to set a reasonable schedule that makes sense
25 for everybody involved.

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1 Now, all right. So given that I guess I would be
2 inclined to set a deadline of, let's say, January 9th to
3 complete the plaintiff FACC sheets for the FACC plaintiffs,
4 does that make sense?

5 MR. BERMAN: That is fine with us, your Honor.

6 THE COURT: Great. I will do that.

7 I think I am going to leave open for now the plaintiff
8 FACC sheet deadline for other named plaintiffs; that is, named
9 plaintiffs from jurisdictions other than those that are subject
10 to the motion to dismiss practice on the TACC and the FACC.

11 We'll be meeting a couple of times between now and
12 then, so you can take stock of progress and where things stand,
13 and it may be that I will require those plaintiffs to complete
14 the FACC sheets if we are getting further down the road, and I
15 would hope it moves things along. I will have a better sense
16 of where things stand both in terms of motion to dismiss
17 briefing and where your discovery stands as the case proceeds.
18 So I am not going to set a deadline for them now.

19 So the flip side of them is they're not required to
20 produce plaintiff FACC sheets now, which should go without
21 saying, all right?

22 Does anyone see the need for me to spell out in more
23 detail deadlines or when new GM can seek discovery from really
24 the FACC plaintiffs that are relevant there?

25 Or can I leave it in general terms just to say that

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1 parties should prioritize discovery with respect to the TACC
2 plaintiffs, and obviously interrogatories and depositions
3 shouldn't go forward until the plaintiff FACC sheets have been
4 completed? So to some extent that automatically stages things.

5 Is does that suffice?

6 MR. BERMAN: That is okay with us, your Honor.

7 MR. GODFREY: I would like the ability to take
8 depositions starting next week if I want to. Some of these
9 plaintiffs we may decide on even before the plaintiff FACC
10 sheets. I have to think about this, but I would not want to
11 have to wait until January before we take a deposition of a
12 named plaintiff.

13 MR. BERMAN: I thought the whole purpose of the FACC
14 sheet in part was to streamline the deposition process so that
15 you have that information. Why are we doing this if they
16 want --

17 MR. GODFREY: It is for some, not necessarily for
18 others.

19 THE COURT: All right. I think what I am going to do
20 is say that no depositions should occur until the plaintiff
21 FACC sheets have been produced without agreement of the other
22 side or leave of the court.

23 Mr. Godfrey, if you think there is some basis to
24 proceed with a deposition in the absence of plaintiff FACC
25 sheets, you can discuss it with lead counsel or raise it with

1 me, but otherwise I think that the more efficient way forward
2 is to have the plaintiff FACC sheets produced first, and that
3 may obviate the need for some of the depositions or not. If
4 you have a good reason for proceeding, then presumably you can
5 persuade them or me of that reason.

6 MR. GODFREY: Let me ask a question just so your Honor
7 understands what ideas we are certainly kicking around.

8 Five of the jurisdictions have no named plaintiff.
9 Some of the named plaintiffs who were the original 10 have now
10 been dropped. They were in this case as a plaintiff two years,
11 two and a half years almost, and now they've been dropped out
12 of the lawsuit according to the amended complaint.

13 We may want some discovery on that. I don't know
14 whether your Honor's anticipating the people who dropped out
15 would give plaintiffs FACC sheets. I assume plaintiffs'
16 position is no, but I may want to take their depositions.

17 THE COURT: For what reason if they're no longer in
18 the case?

19 MR. GODFREY: Right. Usually my experience is class
20 action litigation names plaintiffs who have dropped out for a
21 good reason for not being in the case. It is to illustrate
22 very well their claims are not typical and commonality does not
23 predominate.

24 MR. BERMAN: To give you an example, Ms. Andrews is
25 not in the FACC because you dismissed her case. We went

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1 through your Honor's rulings and figured out who would be out
2 and in. To my knowledge, the only reason anyone was taken out
3 was because of your ruling. There might be one or two out
4 there who just said I have had enough of this, I don't want to
5 be a class rep any more. I just don't see why to open these
6 people up to discovery when they dropped out.

7 THE COURT: All right. I want to stick with what I
8 said a moment ago; which is to say, no depositions should occur
9 until the plaintiff FACC sheet has been produced without
10 agreement of the other side or my permission. Mr. Godfrey, if
11 you want to pursue any of the depositions you just described,
12 then I will follow that path, which is to say, either persuade
13 Mr. Berman or persuade me you should have been permitted to do
14 so, and I will put the onus on you to do that.

15 MR. GODFREY: We'll try to persuade your Honor, I
16 suspect, but that is neither here nor there. We will be left
17 to trying to persuade you, but we'll see.

18 THE COURT: It could be. You need to put a little
19 more meat and specific meat on the bones with Mr. Berman before
20 you come to me, all right?

21 With respect to depositions, I think that it is as
22 appropriate here as it was with respect to the GM witnesses to
23 set a numerical limit per month, and 25, which is the higher
24 number that lead counsel has agreed to, seems reasonable to me,
25 so I will make that the limit per month.

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1 Now, absent class member communications and discovery,
2 I think I am going to need a little bit further time to think
3 about this, and I haven't really had adequate time to think
4 about it or look into the issue, but I just want to
5 understand --

6 MR. BERMAN: Sorry, your Honor? I hate to interrupt.
7 On the number of depositions --

8 THE COURT: If you are going to interrupt, you should
9 interrupt with the microphone.

10 MR. BERMAN: I apologize if I am interrupting.

11 You skipped over this topic where you said we agreed
12 to 25 depositions a month. I thought we were arguing -- at least my
13 understanding of our letter is your order said 16 depositions a month,
14 and that is what we are asking for.

15 THE COURT: I was under the impression that you
16 thought that a limit should be placed and that you were willing
17 to go up to 25.

18 MS. CABRASER: Yes, yes, the top of Page 4, we did.

19 MR. BERMAN: I didn't catch that from my own side. I
20 am sorry, your Honor. Someone is going to hear from me about
21 that!

22 MS. CABRASER: I'll take the blame for that, your
23 Honor. We did up it to 25.

24 THE COURT: You upped it. It is now upped.

25 Absent class member communications and discovery

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1 again, I think I'll need to take additional time to think this
2 issue through, but just so I understand, I take it plaintiffs'
3 position is that no discovery should be allowed, but
4 communications should be allowed subject to the sort of
5 safeguards and procedures that you have proposed. Is that an
6 accurate statement?

7 MR. BERMAN: Yes. Just to be brief, we think that
8 given the extraordinary amount of discovery that new GM is
9 seeking just from the plaintiffs, so under new GM theory --
10 eventually, we don't dispute this -- they're going to have full
11 discovery, interrogatories and RFP from 245 plaintiffs,
12 assuming all survive the motion to dismiss stage. That is an
13 incredible number of depositions.

14 As we understand the case law, they have to show good
15 cause. We think first let's take the 245. They can come and
16 maybe convince us as to discrete reasons why absent class
17 member discovery would be appropriate after the 245, but I
18 don't think they have made a showing of good cause at this
19 point in the litigation. As to communications with absent
20 class members, you're right, we can't stop that, but we believe
21 that case law suggests that there should be some supervision
22 along the lines of what we did in the Toyota litigation.

23 THE COURT: If you concede you can't stop it, why not
24 allow for it to proceed in a slightly more formal way; that is
25 to say, authorize some discovery, albeit perhaps limited

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1 discovery, in the form of interrogatories or the like so that
2 in essence they're sort of regulated but useable?

3 MR. BERMAN: I think the case law is absolutely clear
4 and the manual is clear discovery against absent class members
5 is not favored. There is a big difference between calling
6 someone up and saying hey, I am from General Motors, I would
7 like to talk to you and, by the way, I have to tell you that
8 you don't have to talk to me. Bam, the person can hang up the
9 phone, then sending them an RFP and saying you're an absent
10 class member and the court order you, someone who has never
11 appeared in this Court voluntarily to answer discovery and be
12 subject to all the burdens and sanctions that come with
13 answering discovery. The cases have made that clear
14 distinction.

15 THE COURT: Mr. Godfrey.

16 MR. GODFREY: We are confusing a number of issues
17 by -- so understand what is going on here --

18 THE COURT: Slowly.

19 MR. GODFREY: One, named plaintiffs who drop out they
20 don't want us to talk to.

21 Two, the millions of absent class members that they
22 claim they want to represent they don't want us to talk to.

23 Three, they want the court to issue a prior restraint,
24 violative of the First Amendment, without precedent in this or
25 any other circuit since 1981 in the Gulf Oil case, so only they

1 can talk to them.

2 Finally, four, yes, they have 244 plaintiffs they
3 self-selected over two a half years, 244 out of 15 million
4 people they claim to represent. They're trying to represent
5 what the Bershard court called is a hypothetical perfect
6 plaintiff, self-selected, not representative, not typical,
7 lacking in predominant commonality, and one way to do that is
8 to shackle the defendant in terms of putting on a defense.

9 We think the case law we have outlined in our letter,
10 I won't repeat it, supports absent class member discovery. We
11 should be entitled to talk to absent class members. We think
12 there is not a basis in the world to seek a prior restraint
13 because the case law on that after the Gulf Oil verdict case in
14 1981 is very clear about what must be shown is actual abuse,
15 and in two and a half years they can't point to a single
16 instance of any actual abuse or a record basis for potential
17 abuse, record basis that isn't hypothetical musings of
18 plaintiffs' counsel, record basis or evidentiary basis upon
19 which the court can enter a prior restraint of a defendant's
20 First Amendment rights.

21 We have problems with both their approaches they laid
22 out in the briefs. We need to take a bigger picture of what I
23 think is going on here. They want to present the court with a
24 self-selected, small, idiosyncratic set of plaintiffs and call
25 that representative of the class. That is what this game is

1 all about.

2 THE COURT: Is it your view that, as I understand it,
3 they're not arguing that you can't communicate, and in that
4 regard they are not seeking to restrain you altogether, they
5 just believe there should be essentially an agreed upon script
6 that would preface any sort of communication? In your view,
7 prior restraint is prohibited by the First Amendment?

8 MR. GODFREY: We fully understand our ethical
9 obligations, and the answer to the question is yes. The
10 plaintiffs had free access for two and a half years. We would
11 like to know what plaintiffs' counsel is telling the
12 plaintiffs, how many people they interviewed, what they have
13 told them.

14 It is ironic to me that the only time it was ever
15 raised by plaintiffs' counsel about defenses is after two a
16 half years when they're complaining about the defendant. Now
17 defendant may want to have communications when they had free
18 rein.

19 THE COURT: Am I correct Judge Sullivan had safeguards
20 in place in the Toyota case, and in your view that was a
21 violation of the First Amendment?

22 MR. GODFREY: You're correct, he had limited
23 safeguards. I do not know the record. I would argue that if
24 he had a record like this record, that would be a violation of
25 First Amendment. He may have had a definitive record.

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1 Look, the notion of a limit on what a defendant or a
2 plaintiff can do without a record basis, particularly where the
3 case is over two years old now, and there is no suggestion of
4 any abuse, no suggestion of any misunderstanding, is I think a
5 bit reaching too far, frankly.

6 THE COURT: All right. Is there anything you want to
7 add? Otherwise, I will take this under advisement and give you
8 my thoughts in due course.

9 MS. CABRASER: Your Honor, just briefly.

10 I think most of the case law we cited is post-Kleiner,
11 and the point of effectively managing formal discovery, for
12 example, to avoid excessive formal discovery, the defendants do
13 have a burden to meet as to why that discovery is needed and
14 appropriate, and appropriate. Courts have limited it, and
15 where it has been allowed, for example, it would typically be
16 done by way of sampling. Two things are going on here:

17 First, as in Toyota, there are safeguards and
18 restrictions when defendants seek to reach out informally to
19 unnamed absent class members. They do have to advise those
20 folks that there is a class action going on, that there are
21 lead counsel or interim class counsel or proposed class
22 counsel, and give those folks an opportunity to talk to those
23 counsel or simply not talk to anyone.

24 In the case of formal discovery, absent class members
25 are not parties. They're not subject to interrogatories.

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1 Defendants that have managed to meet their burden with respect
2 to limited discovery have been typically granted some sort of
3 sampling regime, so the discovery is not unfettered. People
4 that are not named in class actions have a right to be passive
5 beneficiaries and not participate in formal discovery.

6 I don't think we are there yet in terms of what type
7 of formal discovery, if any, of absent class members would be
8 necessary or appropriate here, and that can be something for
9 the court to delineate at a later time, but there isn't any
10 case law that supports the notion of unfettered, informal
11 communications without safeguards or unfettered formal
12 discovery of absent class members.

13 THE COURT: If I were to adopt a limited sampling-type
14 approach, is that something that you think could be addressed
15 now or is it your view that should be addressed down the road?

16 And, if so, when and how?

17 MR. BERMAN: I think we should address it again after
18 GM has done the 200-plus depositions that they have asked for,
19 which I could tell you I can't think of a class case where we
20 had 200 depositions of plaintiffs. So this would be a first.

21 At the end of the 200, they could come to us and say
22 look, all the (inaudible) said you self-selected this or we are
23 missing this and you don't have anyone who we think would fit
24 this category. We would be glad to listen, but sitting here
25 today, there has been no showing of good cause, not a single

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1 citation of FACC as to what the purpose of this deposition
2 would be in addition to depositions that are already
3 authorized, nothing.

4 THE COURT: As I said, I'll take it under advisement.

5 I think the previously named plaintiffs who have been
6 dropped, to me, are in a separate category and you can discuss
7 that, and I surmise I may be hearing further from you on that
8 front.

9 What I am more concerned about here is the 15 million
10 or so other people who may or may not know they're putative
11 class members and what discovery, if any, should be allowed
12 with them. I will give you some further thoughts on that. I
13 don't think there is any immediate urgency in the sense that I
14 don't think any of that should happen right now, and again
15 Phase I, if you will, of this process should focus on the TACC
16 plaintiffs.

17 Now, that being said, my concern about deferring it as
18 long as Mr. Berman just suggested is that I don't know if
19 trying this case in the middle or end of 2018 is feasible, but
20 to the extent that I want to move things along as quickly as I
21 can and do ultimately want to bring it to closure, I think that
22 deferring it until after all the named plaintiffs have been
23 deposed, which may require motion practice with respect to
24 additional states and so forth, we're just basically kicking
25 the can further down the road than I think may be appropriate.

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1 The bottom line is I will get back to you on it. It
2 is possible that I will get back to you before the next status
3 conference. It is possible I won't. I don't think there is
4 any immediate urgency here, but I think it is a tricky issue
5 that certainly requires additional consideration on my part,
6 and if I think additional discussion is warranted, I will not
7 resolve it before our next conference.

8 All right. With respect to the deadlines for FACC and
9 expert discovery, I am okay with the deadlines you have
10 proposed. In light of the experience with the personal injury
11 wrongful death bellwethers, I am going to allow rebuttal expert
12 reports as the plaintiffs have proposed.

13 Next, class certification and summary judgment motion
14 practice. I have a couple of questions here. One is why the
15 motions should not pertain to all 16 states that will have
16 presumably been resolved once we get to this point. I think in
17 the proposed order, if I am not mistaken, it just referenced
18 the eight that had been subject to the TACC motion to dismiss.
19 I would have assumed that it would cover all 16.

20 Second, new GM proposes that the motions be filed
21 essentially at the same time, and I am okay with that and I
22 didn't hear any opposition to that proposal from lead counsel.
23 I guess the question I have is why not keep them on the same
24 schedule? The motion briefing, proposed briefing schedule with
25 respect to class certification is considerably longer than the

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1 proposed briefing schedule for summary judgment, and I guess
2 the question is why and is that necessary.

3 Then the last thing just I guess is an observation or
4 a thought, which is, I do think it makes sense to set these
5 deadlines now, but I think there is a lot of variable between
6 now and when we get there. In that regard, I guess I am
7 viewing them more if I set them as soft deadlines that may
8 ultimately need to be moved if I don't decide the motion to
9 dismiss as quickly as I would hope to decide it, if there are
10 other variables with respect to discovery of the other named
11 plaintiffs or absent class members and the like, all of which
12 is to say on the one hand, as you know, I am a fan of setting a
13 schedule to keep to an aggressive schedule, but at the same
14 time, I am not a hundred percent confident that these dates
15 will ultimately hold.

16 Going back to the first two points, does anyone want
17 to address those?

18 MR. BERMAN: Your first question, your Honor, was
19 whether the class motion will be relating to what number of
20 states would be in the class motion. Is that correct?

21 THE COURT: Both class and summary judgment motion,
22 the language, and it may be that the parties are not in
23 agreement about this, and that might be the heart of the issue,
24 but the language that I think it was new GM added to the
25 proposed order limited motion practice on both fronts to the

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1 eight jurisdictions that were addressed in the TACC motion to
2 dismiss.

3 I think it may be that the disagreement -- and I infer
4 from the beginning of your letter -- is that you, in an ideal
5 world you want these motions to address all states, and in an
6 ideal world maybe that would be the case. At a minimum, I
7 would think they should address the 16 that presumably would be
8 resolved by the point these motions are filed.

9 MR. BERMAN: I agree with you that the minimum should
10 be the 16. Where we're in disagreement is whether or not given
11 the process you set up, of course, you have this motion to
12 dismiss ruling, then we meet and confer, we begin the grouping.

13 It is our belief that it is premature, but we can give
14 you cases to this effect. One was an MDL that was actually
15 tried. There was grouping thereafter. We believe we can bring
16 the class motion that encompasses virtually all the states in
17 one motion; and the court, therefore, can advance the case to
18 its conclusion rapidly.

19 Again it goes to this grouping issue where we
20 believe -- I know this will be hotly contested -- that if the
21 laws of the states are similar, and many courts have found that
22 they are, you can group them together and bring a class motion
23 under one theory for 30 states. So we're planning on moving in
24 that direction when we move for class certification.

25 THE COURT: All right. Mr. Godfrey, I guess I don't

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1 think we are going to be able to resolve that issue here and
2 now. I think this will require further discussion in
3 connection with the discussions you will be having over the
4 coming months with respect to the 35 other jurisdictions, and
5 we'll see how that all plays out. My guess is we'll need to
6 perhaps litigate how we proceed down the road.

7 I guess for present purposes, my question is at a
8 minimum why shouldn't it include the 16 states or jurisdictions
9 that will presumably have been ruled upon come the deadline?

10 MR. GODFREY: At a minimum and a maximum, it should be
11 the 16. The reason I say maximum is this will be the first
12 time in the history of class action litigation, except for
13 certain state courts in the '90s in certain jurisdictions your
14 Honor is not familiar with, where the plaintiffs would be
15 moving for class certification where the defendant had no
16 permission to conduct depositions of the named representatives.

17 When you talk about staging, you can't have a class
18 motion where we don't have access to and can't take the
19 deposition of people, much less have rulings on basic issues of
20 law. So we have no problem with 16. I think that makes a lot
21 of sense. Unless we are going to do this way down the road
22 after all discovery, all motion practice, et cetera, predicate
23 to summary judgment class certification, you just can't do it.
24 It is fundamentally unfair, and the defendant has been deprived
25 of its ability to put on a defense. That is the point of

1 departure here. I understand what they want to do, but I
2 understand what the law entitles us to do in defense, we
3 believe.

4 THE COURT: All right. I think you shouldn't
5 underestimate my knowledge of many jurisdictions. Be that as
6 it may, I don't think we can or should resolve the heart of
7 this dispute today. This is within the scope of what I said
8 earlier you should be discussing over the coming months.

9 I think I will make clear that at a minimum, it will
10 address the 16 jurisdictions that presumably will be resolved
11 by my prior ruling and my forthcoming ruling, and then it
12 remains to be seen whether and to what extent the motion
13 practice would concern another, any of the other 35
14 jurisdictions. In that regard, I think there are a few
15 options, but you should discuss these and any others you can
16 think of in the coming months.

17 One is that it would be limited to the 16. One is
18 that if you're able to agree that my ruling as to X
19 jurisdiction applies to additional A, B and C jurisdictions, we
20 could presumably fold those in and perhaps new GM would take
21 discovery with respect to named plaintiffs and others from
22 those jurisdictions.

23 Now, a third is that -- well, I guess this is similar
24 to the first -- is that motion practice would be limited to
25 certain jurisdictions, and then after rulings on those motions,

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1 we'd figure out some process to apply those to other
2 jurisdictions, perhaps even have bellwether trials on
3 jurisdictions that survive those motions.

4 Then the fourth -- I have lost my train of thought --
5 would perhaps be to postpone this motion practice if Mr.
6 Godfrey is right and they're entitled to further discovery on
7 these other jurisdictions basically in anticipation it might
8 not be possible to do it by next December, whenever these
9 motions are due, then it might be those dates just don't hold.
10 I think there are too many variables to nail all of that down
11 now and this will be within the scope of the discussions I have
12 already discussed, and we'll leave it there for now. Good?

13 The second question I had was why the class
14 certification motion shouldn't be put on the same briefing
15 schedule for the summary judgment motion? Is there reason you
16 need additional time for that?

17 MR. BERMAN: I don't know what summary judgment
18 grounds new GM was thinking of, but typically in cases like
19 this, the class motion is a little more complicated than the
20 summary judgment motion. That is why I think we need more
21 spacing.

22 THE COURT: All right. Mr. Godfrey.

23 MR. GODFREY: Typically, I say we brief them
24 simultaneously. It is done with summary judgment. If you want
25 to make it simultaneous if it is easier for the court, I think

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1 that makes the most sense from an efficiency's standpoint. I
2 leave that to the court's discretion.

3 THE COURT: Could you file your opposition on the same
4 schedule as the summary judgment briefing schedule, which
5 essentially would give you a month to file your opposition --
6 sorry -- give plaintiffs a motion to file their opposition?

7 Could you file your opposition on class certification
8 in the same time-frame, a month, so that essentially you're
9 working on your opposition while they're working on their
10 opposition to the motion and replies?

11 MR. GODFREY: We can do it in a month, yes, your
12 Honor.

13 THE COURT: I might align those, and if that proves to
14 be overly ambitious, we can revisit that down the road as well.

15 MR. GODFREY: I should apologize. I was thinking of
16 Beaver County, Oklahoma. I didn't see your Honor has --
17 (inaudible) -- I shouldn't assume that.

18 THE COURT: No worries. Supplemental expert discovery
19 is next on my list. I just don't see why we need to decide
20 that now. Instead I think within two weeks of my rulings on
21 summary judgment and actually -- now what? I am going to leave
22 that open for now, and it will be subject to further discussion
23 since I think some of these deadlines are more aspirational
24 than they are fixed. That will be something that we can
25 discuss down the road when we have a firmer grasp on when

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1 motion practice will actually proceed and what the scope of it
2 will be.

3 Now, similarly with respect to future motion practice,
4 I am not going to include the precise language that new GM has
5 proposed, but I do think it -- what I will say is no other
6 motion to dismiss, summary judgment or class certification
7 motion will be filed except with leave of court or after
8 conferring with one another, so that the bottom line is I have
9 a sense of what is coming down the pike. If I anticipate we
10 will be discussing these things down the road, and if you think
11 that other motions are appropriate, then we will discuss them,
12 I am sure. I will leave it there.

13 Lastly, the only other issue I think that you have
14 addressed is the remand issue, which was discussed in new GM's
15 letter, but not in lead counsel's letter. Mr. Berman, is there
16 anything you want to say? My inclination is the issue is not
17 really ripe at the moment. I am inclined to agree with new GM
18 on that score. Do you think otherwise?

19 MR. BERMAN: As much as I hate to admit it, I agree
20 with new GM on this one.

21 THE COURT: Great. Then I will not deal with it
22 today. If any plaintiffs' lawyer out there who is not sitting
23 at the front table disagrees with that, I think they should
24 just raise it with new GM, and if there is a dispute or an
25 issue, they can make an appropriate application to me. I

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1 personally think that for the reasons stated by new GM, it is
2 premature.

3 MR. BERMAN: We communicated with all the known
4 plaintiffs' lawyers prior to filing the FACC, put them on
5 notice of what we are doing, and we haven't heard any
6 objection.

7 THE COURT: That is true for Mr. Peller as well since
8 he has been an outlier on this front.

9 MR. BERMAN: I hate to say what I think Mr. Peller was
10 thinking, but I don't recall, sitting here today, he has
11 objected to the FACC, he suggested or the suggested he be
12 remanded.

13 THE COURT: By "remand" in this context, we are not
14 referring to the Marshals, to be clear.

15 MR. BERMAN: Don't press me on that.

16 THE COURT: Well, Mr. Peller knows how to be heard.
17 If he has a different view on this, I am sure he will raise it
18 with me, but you should first confer with counsel for new GM
19 and lead counsel for that matter.

20 MR. BERMAN: Could I go back to one thing?

21 THE COURT: Yes.

22 MR. BERMAN: On the dates for summary judgment and
23 class certification, class practice, if you are actually going
24 to enter states, I see that everything would be coming to a
25 tremendous crash between December 15th and January 15th. Maybe

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1 GM and lead counsel should confer a little bit. I hate to ruin
2 the holiday season for lots of people on both sides. Maybe we
3 can figure a way to finesse that a little bit.

4 MR. GODFREY: That is a valid discussion. Why don't
5 Mr. Berman and Ms. Cabraser confer afterwards and get a letter
6 to the court tomorrow with suggested dates. If the court
7 thinks those suggestions are rational, maybe the court can
8 consider them as part of your decision-making process.

9 THE COURT: Sure. That is fine. Can you get it to me
10 by noon tomorrow, though?

11 MR. GODFREY: It has to be in my case, yes, sir.

12 MR. BERMAN: Yes, your Honor.

13 THE COURT: I am not operational, shall we say, Monday
14 and Tuesday because of additional Jewish Holidays so I would
15 rather get this out the door tomorrow if I can. All right. I
16 think that exhausts all the issues in the letter briefs and
17 proposed orders. Is there anything I missed?

18 MR. BERMAN: Next status conference?

19 THE COURT: I mean anything I missed on that
20 particular topic?

21 MR. GODFREY: I am sure your Honor covered everything.

22 THE COURT: I think will take a stab at revising the
23 proposed order in light of my comments and not burden Mr.
24 Pixton with that task. If I have trouble, you will hear from
25 me.

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1 The next item is pre-bankruptcy wrongful death and
2 personal injury cases. It sounds like you were discussing
3 that. I don't know how advanced those discussions are, but
4 does anyone want to fill me in on that?

5 MR. HILLIARD: Judge, understandably Ms. Bloom has
6 been pretty busy with plaintiffs' side on getting the first
7 part of the settlements finalized. We had had preliminary
8 discussions by getting the pre-bankruptcy injury and death
9 cases to fill out the same type of hybrid plaintiffs' FAC
10 sheet the court ordered for the rest of the docket, and that is
11 done or close to being done.

12 I have been advised by GM that until the U.S. Supreme
13 Court makes its decision on cert., and the earliest that can
14 happen is in January, we are going to finalize the existing
15 settlement and put the discussions, should there be any
16 substantive discussions, on hold until then. So because of
17 that, we have now Mr. Brock and I began to discuss what do we
18 do with the cases should they not settle since they're all
19 bellwether-ed already and they are all filed directly into this
20 Court, so this is where they stay, so we either treat them as
21 one-off cases or we create a hybrid control order for the court
22 as to those cases and figure out how to move forward.

23 Premature, I would suggest to the court at this point,
24 and I would assure the court that we're talking about it and
25 that we would develop a plan should the docket remain alive

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1 after January, and we won't wait long to propose something to
2 your Honor. Perhaps the court has some idea since it is your
3 docket and these cases will be there waiting for some sort of
4 attention. That is where it is right now.

5 THE COURT: All right. I think we can probably leave
6 it there is my guess given it sounds like everybody is in
7 agreement that this will be discussed down the road at a
8 minimum after the Supreme Court rules on the cert. petition
9 issue.

10 I think as to certain buckets of the cases, there may
11 be other things that we need to await in the ruling from the
12 bankruptcy court and litigation thereafter perhaps. The only
13 thing I want to say right now, which I haven't fully thought
14 out myself, but you should discuss in the context of your
15 conferring on these issues, is now I didn't, at least at the
16 time I didn't perceive my authorization to file cases directly
17 in this district to mean that those cases would necessarily be
18 litigated to their conclusion in this district.

19 It was really just an administrative convenience to
20 avoid the need to go through the JPML process. My thought at
21 the time was when, if it was ultimately necessary to remand
22 cases, that we would figure out some process with respect to
23 directly-filed cases that would essentially identify what
24 districts they would have been filed in but for the
25 authorization to file in this district, and I would transfer

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1 them there presumably pursuant to 1404, not 1407.

2 All of which is to say I didn't necessarily see myself
3 as agreeing to resolve 2000 some-odd cases or however many have
4 been filed here, but why don't you just chew on that, and you
5 can wrap that into the discussions you have going forward, but
6 I certainly think for the time being, for the reasons I have
7 said at a prior conference, it makes sense for all those cases
8 to remain with me. We'll leave it there for now unless anyone
9 needs to add anything.

10 MR. BROCK: Nothing for GM to add.

11 THE COURT: That brings --

12 MR. HILLIARD: We wouldn't mind staying, Judge.

13 THE COURT: You don't have to tell me if you mind
14 staying, too, Mr. Brock.

15 MR. BROCK: We're okay here.

16 THE COURT: Great.

17 MR. BROCK: I will say we do have essentially a year
18 of work in personal injury space in front of us, with trials
19 beginning in July, pretrials between July and the end of the
20 year, another case set in early 2018, and just responding to
21 your Honor's comment that it would be good to, if possible to
22 hang onto these cases for a while, I do think we would like to
23 look at some method for looking in pre-bankruptcy cases if we
24 need to litigate them to conclusion and some type of bellwether
25 process here. I think what we have done here has been very

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1 helpful to the process of taking care of the universe of cases
2 and I think can continue to serve that role in the future.

3 THE COURT: That sounds good. We will discuss it
4 further. Settlement, anything to update me on that front or
5 anything I can do to help?

6 MR. GODFREY: Only, your Honor, that the Forrester
7 case, one of the bellwether selections has now been settled.

8 THE COURT: Okay.

9 MR. GODFREY: We continue -- that is, Ms. Bloom and
10 Mr. -- (inaudible) -- who is not here today, his colleagues who
11 are can continue to proceed on the dual track using the lessons
12 and information learned from the first bellwether phase to see
13 how many cases they can resolve. We continue to proceed on the
14 litigation track and settlement track and we continue to make
15 progress on both.

16 THE COURT: The Forrester case, was that settlement
17 already, was there a stipulation or notice filed on that?

18 MS. BLOOM: So on the Forrester case, we have entered
19 into a confidential term sheet that sets forth that we will now
20 move forward to a confidential settlement agreement, so I
21 expect that to occur by month-end, and that would officially
22 settle the case.

23 I do not expect at this time that we need any sort of
24 court approval process there. I think it will simply be a
25 matter that we will file a joint stipulation of dismissal, with

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1 prejudice. That is what it is looking like right now.

2 THE COURT: Remind me -- because I don't have the
3 bellwether process memorized, either -- what effect does that
4 have on Phase II of the bellwethers in terms of where that
5 stands? We're in the early discovery phase, so presumably that
6 is just one case. Are we past the date where it can be
7 replaced?

8 MR. BROCK: There are options for replacement in the
9 bellwether order. With regard to replacement of cases, I think
10 there is a provision that says up until September the 30th,
11 that the plaintiffs may replace a case within three days of a
12 resolution if it is one of their picks. That has not occurred
13 yet. Then the case that is most recently settled is outside of
14 that 30-day window. There is actually not a provision for what
15 to do in that period of time, though. If plaintiffs wish to
16 select a replacement case for a recently-settled case, we
17 obviously will be willing to meet and confer with them about
18 that.

19 THE COURT: Why don't you guys talk about that and
20 figure out if anything can or should be done, and you can
21 propose it to me if there is anything you think that I ought to
22 do.

23 MR. HILLIARD: It is a little premature, but GM
24 settled both the Category C plaintiffs' cases, and so we're
25 starting to begin the process of figuring out if there still is

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1 a viable Category C within which we can bellwether cases. That
2 would probably be the heart of our next status conference
3 agenda.

4 THE COURT: What is the other Category C case?

5 MR. BROCK: There are two Category C cases that are GM
6 picks, so the process was that each side would select two cases
7 for the Category C group, and then each side would be given one
8 strike. So we still have two cases that are in active
9 discovery and trial prep, which are the two GM picks.

10 THE COURT: My question was what was the other case
11 that settled and has that been submitted to me or is that in
12 works?

13 MR. BROCK: The case that has settled, the other case
14 is Davidson, and we have reported that to your Honor.

15 THE COURT: Where does Boyd fit into this?

16 You probably saw I issued a ruling with respect to
17 that, and that may have have some bearing whether Boyd stays in
18 the bellwether pool as well.

19 MR. BROCK: Boyd is in the Category A group. It is a
20 GM pick. If it were to be dismissed with prejudice, we would
21 like to replace that case because that would only leave us with
22 three in the Category A, and consistent with what we were
23 saying just a few minutes ago about being beyond the September
24 30th date, I hope we could work something out for that
25 selection.

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1 THE COURT: All right. Given the deadline I set the
2 other day, that may come to a head sooner rather than later,
3 and in which case at the next status case this may be something
4 we need to and should discuss.

5 Anything further on that? Very good.

6 I did issue a text-only order this morning in a member
7 case called Uglow, U G L O W, 15 CV 4385, and there was a
8 motion filed in that case by the plaintiff titled a motion to
9 comply, quote-unquote, that seemed to address the data that was
10 called for by my Order No. 108. I don't know if new GM has
11 seen this yet. All right.

12 My order said that you have to respond by next Tuesday
13 unless you are prepared to address it at today's conference,
14 and given the blank stares on each of your faces, I am guessing
15 you'll address it by Tuesday.

16 MR. GODFREY: Thank your Honor.

17 THE COURT: You're welcome. It was not filed in the
18 MD docket. You should look at the member case docket, 15 CV
19 4385. For my convenience, if you could file your response in
20 the MD docket as well as member case docket, that would be
21 helpful.

22 The last item is future conferences. We do have the
23 one on calendar for November 9th, at 9:30. I flagged for you
24 that might not work for me. I currently have a trial scheduled
25 that week. While it may disappear, it hasn't yet. One option

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1 is to leave it on the calendar and I will tell you if I can't
2 do it. Another option would be to move it, and it might be
3 that it is sooner than we need a conference anyway.

4 Any thoughts?

5 MS. CABRASER: Your Honor, counsel had some
6 conversation about this before the status conference, and I
7 don't know that anything has changed based on the conference
8 itself, but we thought at least initially that perhaps the next
9 status conference could be in December. One date I think
10 worked for everyone was Tuesday, December 20th. Yes, you're
11 right, I think --

12 (Off-the-record discussion)

13 MS. CABRASER: -- you're right, the 13th was slightly
14 better for several counsel. That would mean skipping November.
15 I don't know whether anyone feels differently about that given
16 your orders today, but I don't think it slows down or derails
17 anything that we have already been instructed to be in process
18 on.

19 MR. GODFREY: Your Honor, we had originally thought we
20 could move everything to December. I think there is enough
21 uncertainty, I think -- despite what I said before the
22 conference, as I sat through the conference, I would like to
23 keep the November date. I think the 13th of December works
24 fine or the 20th of December works fine for us, but I would
25 like to keep the November date.

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1 Maybe the best way to do it is keep the November 9th
2 date or some other date the following week if the parties
3 conclude there is no reason for it, but there is enough going
4 on here I, as I sat here listening today, there are enough
5 issues percolating around, keeping that status in November
6 would be helpful. Otherwise, two months strikes me as too long
7 under the circumstances.

8 Maybe I am being overly cautiously in that respect.
9 As I sat here jotting down the issues that have come up between
10 now and then, maybe we should have one in the middle of
11 November, if that works for the court's schedule.

12 THE COURT: All right. So it is complicated by the
13 fact I uncharacteristically have a slew of trials that will be
14 coming up. You may see in the New York Times reference to my
15 lack of trials, at least criminal jury trials. If we can do
16 things in the afternoon, it might make things a little easier
17 given my trial schedule. I guess going off what Mr. Godfrey
18 just said, could we do Tuesday, November 15th, at 3:30 in the
19 afternoon as a November date?

20 MS. CABRASER: Your Honor, several of us have a
21 hearing date in federal court in Oakland on the 15th, which I
22 think is a day-long hearing, and it is on the wrong side of the
23 country -- well, the other side of the country.

24 THE COURT: All right. What about the same time on
25 Thursday, November 17th, at 3:30?

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1 MR. BERMAN: Your Honor, I am giving a speech at the
2 University of Michigan that day.

3 THE COURT: That is in the middle of the country.

4 MR. BERMAN: I could do it Friday, fly from Ann Arbor
5 to New York for a Friday conference.

6 MS. CABRASER: That would still be mid-November, the
7 18th.

8 THE COURT: All right. That might be a possibility,
9 but let me throw out another option which would be preferable
10 for me, which is the afternoon of Thursday, November 10th, at
11 3:30 as well.

12 MS. CABRASER: That would work for me, your Honor.

13 THE COURT: Going once?

14 MR. GODFREY: That works for us, your Honor.

15 THE COURT: Excellent. We'll do November 10th, at
16 3:30, and while we are at it, given that December calendars
17 tend to fill up, let me not presume, do you anticipate the need
18 or desire for a status conference in December?

19 Everybody seemed to be nodding. Why don't we try to
20 figure that out now. I can't remember the dates that you all
21 threw out at this point, but would the morning of either
22 December 14th or December --

23 MS. CABRASER: I think we had figured out that
24 December 13th worked as well. December 14th might work also.

25 MR. GODFREY: The 14th works for us. I have a slight

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1 preference for that because I have a trial that I think will be
2 ending by then in Philadelphia.

3 THE COURT: Was the 20th an option somebody had
4 brought up?

5 MR. GODFREY: That works for me.

6 MR. BROCK: I prefer not the 20th.

7 MR. HILLIARD: It doesn't work for me.

8 THE COURT: One at a time.

9 MR. BROCK: I would prefer not to have it on the 20th.

10 THE COURT: The 19th, or not an option?

11 MR. BERMAN: Not an option for me.

12 THE COURT: Not?

13 MR. BERMAN: Not.

14 THE COURT: Let's do the 14th, at 9:30, sticking with
15 our regular time. The two dates are November 10th at 3:30 and
16 December 14th at 9:30. Going once, going twice. Sold!

17 MR. GODFREY: Thank you. I was having revolt here at
18 the back. We have to deal with the next matter.

19 THE COURT: Anything else to discuss?

20 Very good. My congratulations to you, Mr. Godfrey, on
21 the wedding, and we are adjourned.

22 (Court adjourned)

23

24

25

